

Decision \_\_\_\_\_

**BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA**

Application of Excel Telecommunications, Inc. (U-5196-C) for a Certificate of Public Convenience and Necessity To Provide Competitive Local Exchange Services Combined Resale and Limited Facilities Basis in the State of California.

Application 02-01-013  
(Filed January 14, 2002)

**O P I N I O N**

**I. Summary**

Excel Telecommunications, Inc. (Applicant) seeks a certificate of public convenience and necessity (CPCN) under Pub. Util. Code § 1001 for authority to provide limited facilities-based and resold local exchange telecommunications services as a competitive local carrier (CLC).<sup>1</sup> By this decision, we grant the requested authority subject to the terms and conditions set forth below.

**II. Background**

In prior decisions, we authorized the provision of competitive local exchange service within the service territories of Pacific Bell Telephone Company (Pacific), Verizon California Inc. (Verizon), Roseville Telephone Company (RTC) and Citizens Telecommunications Company of California, Inc. (CTC).

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<sup>1</sup> A CLC is a common carrier that is issued a CPCN to provide local exchange telecommunications service for a geographic area specified by such carrier.

Applicant, a Texas corporation, requests authority to operate as a limited facilities-based and resale provider of local exchange services within Pacific, Verizon, RTC and CTC's service territories.<sup>2</sup>

Applicant's principal place of business is located at 8750 North Central Expressway, Suite 2000, Dallas, Texas 75231.

### **III. Financial Qualifications**

To be granted a CPCN for authority to provide facilities-based and resold local exchange service, an applicant must demonstrate that it has \$100,000 cash or cash equivalent to meet the firm's start-up expenses. The applicant must also demonstrate that it has sufficient additional resources to cover all deposits required by other telecommunications carriers in order to provide service in California.<sup>3</sup> Applicant provided a guarantee by its parent, VarTec Telecom, Inc. (VarTec), that demonstrates that it meets the financial requirements.

### **IV. Technical Qualifications**

To be granted a CPCN for authority to provide local exchange service, an applicant must make a reasonable showing of technical expertise in telecommunications or a related business. Applicant supplied biographical information on its management that demonstrates that it has sufficient expertise and training to operate as a telecommunications provider.

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<sup>2</sup> By Decisions (D.) 90-02-028 and D.97-05-023, Applicant was authorized to resell interexchange services and issued corporate identification number (U-5196-C). By D.97-08-031, Applicant was authorized to resell local exchange services. Applicant did not exercise its local exchange authority within 12 months as required. Therefore, its local exchange authority expired.

<sup>3</sup> The financial standards for certification to operate as a CLC are set forth in D.95-12-056, Appendix C, Rule 4.B.

Applicant represents that no one associated with or employed by Applicant as an affiliate, officer, director, partner, or owner of more than 10% of Applicant was previously associated with a telecommunications carrier that filed for bankruptcy or went out of business, or was sanctioned by the Federal Communications Commission or any state regulatory agency for failure to comply with any regulatory statute, rule, or order, except as follows.

On June 6, 1991, Applicant was fined \$1,000 by the Florida Public Service Commission for failure to file an annual report.

On August 18, 1995, the Federal Communications Commission (FCC) issued a Notice of Apparent Liability against Applicant. The case involved two alleged unauthorized PIC changes that occurred in 1994. Applicant was assessed and paid a forfeiture of \$80,000. The matter was closed on June 21, 1996.

Connecticut Department of Public Utility Control found that Applicant had been offering services prior to certification. Applicant was granted a CPCN, which it still holds today, and was required to pay \$10,000. The matter was closed on January 24, 1996.

On April 25, 2000, the FCC adopted a consent decree that terminated an investigation into alleged slamming. Pursuant to the decree, Applicant made a voluntary contribution to the U.S. Treasury of \$400,000, and agreed to take a number of actions to prevent slamming by its independent sales representatives.

On October 3, 2000, the Kentucky Public Service Commission approved a settlement between its staff and Applicant regarding 32 alleged slamming violations. Pursuant to the settlement, Applicant paid \$65,000 for the violations, and agreed to changes internal procedures to deter future violations.

By D.02-04-020, VarTec, was granted a CPCN to provide local exchange services. In addition, a settlement was adopted whereby VarTec admitted to

four violations involving a purchase and two sales of affiliates without prior Commission approval, and failing to provide customer notice of a sale. VarTec paid a fine of \$80,000, and restitution to affected customers.

Applicant's payments of fines and contributions for violations as discussed above occurred prior to its acquisition by VarTec. We have granted a CPCN to VarTec, and have approved VarTec's acquisition of Applicant and two other carriers.<sup>4</sup> Therefore, we will grant the application. However, we remind Applicant that we expect its full compliance with all statutory and Commission requirements.

## **V. Tariffs**

Commission staff reviewed Applicant's draft tariffs for compliance with Commission rules and regulations. The deficiencies are noted in Attachment A to this decision. In its compliance tariff filing, Applicant is directed to correct these deficiencies as a condition of our granting approval of its tariffs.

## **VI. California Environmental Quality Act (CEQA)**

The CEQA requires the Commission as the designated lead agency to assess the potential environmental impact of a project in order that adverse effects are avoided, alternatives are investigated, and environmental quality is restored or enhanced to the fullest extent possible. Since Applicant will not be constructing any facilities for the purpose of providing local exchange services, except for equipment to be installed in existing buildings or structures, it can be seen with certainty that there is no possibility that granting this application will

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<sup>4</sup> By D.02-04-021, the Commission approved VarTec's acquisition of Applicant, eMeritus Communications, Inc. (U-5526-C), a local exchange and interexchange carrier, and Long Distance Wholesale Club, Inc. (U-5653-C), an interexchange carrier..

have an adverse impact upon the environment. Applicant must file for additional authority, and submit to any necessary CEQA review, before it can construct facilities.

### **VII. Request to File Under Seal**

Applicant asks to have the financial information filed on July 15, 2002 kept under seal. The financial information consists of financial statements for its parent. Applicant represents that the information is proprietary and sensitive. The information, if revealed, would place Applicant at an unfair business disadvantage. We have granted similar requests in the past and will do so here.

### **VIII. Categorization and Need for Hearings**

In Resolution ALJ 176-3080 dated January 23, 2002, the Commission preliminarily categorized this application as ratesetting, and preliminarily determined that hearings were not necessary. No protests have been received. There is no apparent reason why the application should not be granted. Given these developments, a public hearing is not necessary, and it is not necessary to disturb the preliminary determinations.

### **IX. Comments on Draft Decision**

This is an uncontested matter in which the decision grants the requested relief. Therefore, pursuant to Pub. Util. Code § 311(g)(2), the otherwise applicable 30-day period for public review and comment is being waived.

### **X. Conclusion**

We conclude that the application conforms to our rules for certification as a CLC. Accordingly, we shall grant Applicant a CPCN to provide limited facilities-based and resold local exchange service in Pacific, Verizon, RTC and CTC's service territories subject to compliance with the terms and conditions set forth herein.

**Findings of Fact**

1. A notice of the filing of the application appeared in the Daily Calendar on January 16, 2002.
2. There were no protests to this application.
3. A hearing is not required.
4. In prior decisions, the Commission authorized competition in providing local exchange telecommunications services within the service territories of Pacific, Verizon, RTC and CTC.
5. Applicant has a minimum of \$100,000 of cash or cash equivalent that is reasonably liquid and readily available to meet its start-up expenses.
6. Applicant has sufficient additional cash or cash equivalent to cover any deposits that may be required by other telecommunications carriers in order to provide the proposed service.
7. Applicant's management possesses sufficient experience and knowledge to provide local exchange services to the public.
8. As part of its application, Applicant submitted a draft of its initial tariff that contained the deficiencies identified in Attachment A to this decision. Except for these deficiencies, Applicant's draft tariffs complied with the Commission's requirements.
9. Applicant will not construct any facilities, except for equipment to be installed in existing buildings or structures, in order to provide the proposed service.
10. Public disclosure of the financial information filed under seal would place Applicant at an unfair business disadvantage.

**Conclusions of Law**

1. Applicant has the financial ability to provide the proposed service.

2. Applicant has made a reasonable showing of technical expertise in, or related to, telecommunications.

3. Public convenience and necessity require the competitive local exchange services to be offered by Applicant, subject to the terms and conditions set forth herein.

4. The application should be granted to the extent set forth below.

5. Applicant, once granted a CPCN, should be subject to the applicable Commission rules, decisions, General Orders and statutes that pertain to California public utilities.

6. Applicant's initial tariff filing should correct the deficiencies noted in its draft tariffs as indicated in Attachment A to this decision.

7. Since Applicant will not construct any facilities, except for equipment to be installed in existing buildings or structures, it can be seen with certainty that granting it authority to provide local exchange services will not have a significant adverse effect upon the environment.

8. Because of the public interest in competitive local exchange services, the following order should be effective immediately.

9. Applicant's request to file its financial information under seal should be granted for two years.

**O R D E R**

**IT IS ORDERED** that:

1. A certificate of public convenience and necessity (CPCN) is granted to Excel Telecommunications, Inc. (Applicant) to provide limited facilities-based and resold local exchange services in the service territories of Pacific Bell Telephone Company, Verizon California Inc., Roseville Telephone Company,

and Citizens Telecommunications Company of California, Inc., subject to the terms and conditions set forth below.

2. Applicant is authorized to file tariff schedules for the provision of competitive local exchange services. Applicant may not offer competitive local exchange services until tariffs are on file. Applicant's initial filing shall be made in accordance with General Order (GO) 96-A, excluding Sections IV, V, and VI, and shall correct the deficiencies noted in Attachment A. The tariff shall be effective not less than one day after approval by the Commission's Telecommunications Division. Applicant shall comply with its tariffs.

3. The certificate granted and the authority to render service under the rates, charges, and rules authorized herein will expire if not exercised within 12 months after the effective date of this order.

4. The corporate identification number assigned to Applicant, U-5196-C, shall be included in the caption of all original filings with this Commission, and in the titles of other pleadings filed in existing cases.

5. Applicant shall comply with all applicable rules adopted in the Local Exchange Competition proceeding (Rulemaking 95-04-043/Investigation 95-04-044), as well as all other applicable Commission rules, decisions, GOs and statutes that pertain to California public utilities, subject to the exemptions granted in this decision.

6. Applicant shall comply with the requirements applicable to competitive local exchange carriers included in Attachment B to this decision.

7. Applicant is not authorized to construct facilities, except for equipment to be installed in existing buildings or structures.

8. Applicant's request to have the financial information filed on July 15, 2002 kept under seal is granted for two years from the effective date of this decision. During that period the information shall not be made accessible or disclosed to anyone other than

the Commission staff except on the further order or ruling of the Commission, the Assigned Commissioner, the assigned Administrative Law Judge (ALJ), or the ALJ then designated as Law and Motion Judge.

9. If Applicant believes that further protection of the information kept under seal is needed, it may file a motion stating the justification for further withholding of the information from public inspection, or for such other relief as the Commission rules may then provide. This motion shall be filed no later than one month before the expiration date.

10. This proceeding is closed.

This order is effective today.

Dated \_\_\_\_\_, at San Francisco, California.

**ATTACHMENT A**

List of deficiencies in tariffs filed by Excel Telecommunications, Inc. in A.02-01-013 to be corrected in its tariff compliance filing.

1. Sheet 10: Include the service area map.
2. Sheet 31, Rule 13: If the CLC is a carrier of last resort, say that Basic Service will not be disconnected for non-payment of anything other than residential and single line business, Flat Rate and/or Measured Rate Service as defined in D.96-10-066, Appendix B, page 5. Refer to D.00-03-020.
3. Sheet 41, Rule 19: Remove Rule 19E, 19I, 19J and 19K. The CLC needs concur with Pacific or Verizon's Limitation of Liability tariffs as appended to D.95-12-057.
4. Sheet 70: Include the fees and surcharges show in Attachment B to this decision.
5. Sheet 72: Include the Measured Rate for ULTS, at \$2.85.

**(END OF ATTACHMENT A)**

**ATTACHMENT B****REQUIREMENTS APPLICABLE TO COMPETITIVE LOCAL EXCHANGE CARRIERS**

1. Applicant shall file a written acceptance of the certificate granted in this proceeding.
2. Applicant is subject to:
  - a. The current 1.45% surcharge applicable to all intrastate services except for those excluded by D.94-09-065, as modified by D.95-02-050, to fund the Universal Lifeline Telephone Service Trust Administrative Committee Fund (Pub. Util. Code § 879; Resolution T-16594, October 10, 2001);
  - b. The current 0.481% surcharge applicable to all intrastate services except for those excluded by D.94-09-065, as modified by D.95-02-050, to fund the California Relay Service and Communications Devices Fund (Pub. Util. Code § 2881; D.98-12-073 and Resolution T-16504, March 27, 2001);
  - c. The user fee provided in Pub. Util. Code §§ 431-435, which is 0.11% of gross intrastate revenue (Resolution M-4800);
  - d. The current surcharge applicable to all intrastate services except for those excluded by D.94-09-065, as modified by D.95-02-050, to fund the California High Cost Fund-A (Pub. Util. Code § 739.3; D.96-10-066, pp. 3-4, App. B, Rule 1.C; set by Resolution T-16550 at 0.360%, October 25, 2001);
  - e. The current 1.42% surcharge applicable to all intrastate services except for those excluded by D.94-09-065, as modified by D.95-02-050, to fund the California High Cost Fund-B (D.96-10-066, p. 191, App. B, Rule 6.F., Resolution T-16554, October 25, 2001); and
  - f. The current 0.300% surcharge applicable to all intrastate services except for those excluded by D.94-09-065, as modified by D.95-02-050, to fund the California Teleconnect Fund (D.96-10-066, p. 88, App. B, Rule 8.G, Resolution T-16584, October 10, 2001).

3. Applicant is a competitive local exchange carrier (CLC). The effectiveness of its future tariffs is subject to the schedules set forth in Appendix C, Section 4.E of Decision (D.) 95-12-056:

“E. CLCs shall be subject to the following tariff and contract filing, revision and service pricing standards:

- “(1) Uniform rate reductions for existing tariff services shall become effective on five (5) working days’ notice. Customer notification is not required for rate decreases.
- “(2) Uniform major rate increases for existing tariff services shall become effective on thirty (30) days’ notice to the Commission, and shall require bill inserts, or first class mail notice to customers at least 30 days in advance of the pending rate increase.
- “(3) Uniform minor rate increases, as defined in D.90-11-029, shall become effective on not less than (5) working days’ notice to the Commission. Customer notification is not required for such minor rate increases.
- “(4) Advice letter filings for new services and for all other types of tariff revisions, except changes in text not affecting rates or relocations of text in the tariff schedules, shall become effective on forty (40) days’ notice.
- “(5) Advice letter filings revising the text or location of text material which do not result in an increase in any rate or charge shall become effective on not less than five (5) days’ notice to the Commission.”
- “(6) Contracts shall be subject to GO 96-A rules for NDIECS, except interconnection contracts.
- “(7) CLCs shall file tariffs in accordance with PU Code § 876.”

4. Applicant may deviate from the following provisions of GO 96-A:

(a) paragraph II.C.(1)(b), which requires consecutive sheet numbering and

prohibits the reuse of sheet numbers; and (b) paragraph II.C.(4), which requires that “a separate sheet or series of sheets should be used for each rule.” Tariff filings incorporating these deviations shall be subject to the approval of the Commission’s Telecommunications Division. Tariff filings shall reflect all fees and surcharges to which Applicant is subject, as reflected in 2 above.

5. Applicant shall file a service area map as part of its initial tariff.
6. Prior to initiating service, Applicant shall provide the Commission’s Consumer Services Division with the name and address of its designated contact person(s) for purposes of resolving consumer complaints. This information shall be updated if the name or telephone number changes, or at least annually.
7. Applicant shall notify this Commission in writing of the date that local exchange service is first rendered to the public, no later than five days after service first begins.
8. Applicant shall keep its books and records in accordance with the Generally Accepted Accounting Principles.
9. In the event Applicant’s books and records are required for inspection by the Commission or its staff, it shall either produce such records at the Commission’s offices or reimburse the Commission for the reasonable costs incurred in having Commission staff travel to its office.
10. Applicant shall file an annual report, in compliance with GO 104-A, on a calendar-year basis with the information contained in Attachment C to this decision.
11. Applicant shall ensure that its employees comply with the provisions of Public Utilities (Pub. Util.) Code § 2889.5 regarding solicitation of customers.

12. Within 60 days of the effective date of this order, Applicant shall comply with Pub. Util. Code § 708, Employee Identification Cards, and notify the Director of the Telecommunications Division in writing of its compliance.
13. If Applicant is 90 days or more late in filing an annual report, or in remitting the surcharges and fee listed in 2 above, the Commission's Telecommunications Division shall prepare for Commission consideration a resolution that revokes Applicant's CPCN unless it has received written permission from the Telecommunications Division to file or remit late.
14. Applicant is exempt from General Order 96-A, subsections III.G(1) and (2), and Commission Rule of Practice and Procedure 18(b).
15. Applicant is exempt from Pub. Util. Code §§ 816-830.
16. Applicant is exempt from the requirements of Pub. Util. Code § 851 for the transfer or encumbrance of property whenever such transfer or encumbrance serves to secure debt.
17. Applicant shall send a copy of this decision to concerned local permitting agencies not later than 30 days from the date of this order.

**(END OF ATTACHMENT B)**

**ATTACHMENT C**  
**ANNUAL REPORT**

An original and two copies shall be filed with the California Public Utilities Commission, 505 Van Ness Avenue, Room 3251, San Francisco, CA 94102-3298, no later than March 31st of the year following the calendar year for which the annual report is submitted.

Failure to file this information on time may result in a penalty as provided for in §§ 2107 and 2108 of the Public Utilities Code.

Required information:

1. Exact legal name and U # of the reporting utility.
2. Address.
3. Name, title, address, and telephone number of the person to be contacted concerning the reported information.
4. Name and title of the officer having custody of the general books of account and the address of the office where such books are kept.
5. Type of organization (*e.g.*, corporation, partnership, sole proprietorship, etc.).  
If incorporated, specify:
  - a. Date of filing articles of incorporation with the Secretary of State.
  - b. State in which incorporated.
6. Number and date of the Commission decision granting the CPCN.
7. Date operations were begun.
8. Description of other business activities in which the utility is engaged.
9. List of all affiliated companies and their relationship to the utility. State if affiliate is a:
  - a. Regulated public utility.
  - b. Publicly held corporation.
10. Balance sheet as of December 31st of the year for which information is submitted.
11. Income statement for California operations for the calendar year for which information is submitted.

For answers to any questions concerning this report, call (415) 703-1961.

**(END OF ATTACHMENT C)**